

## **GETTYSBURG BOROUGH ZONING HEARING BOARD**

**IN RE:           APPLICATION OF Barbara D. Shultz and Steven A. Shultz  
Property at 34 Locust Avenue, Gettysburg, Pennsylvania  
ZHB-18-0001**

### **DECISION MEMORANDUM**

The Gettysburg Borough Zoning Hearing Board ("Board") convened a hearing to consider the application of Barbara D. Shultz and Steven A. Shultz ("Applicant") to obtain a special exception under the Borough of Gettysburg ("Borough") Zoning Ordinance Chapter 27 ("Ordinance") Part 5, Section 503(A), Uses Permitted by Special Exception, Bed and Breakfast, at 34 Locust Avenue, Borough of Gettysburg, Adams County, Pennsylvania ("Property"). The Property is wholly located in an R-2 Moderate Density Residential District and additionally within the Streetscape Overlay Enhancement District.

The application was heard Wednesday, April 5, 2018, at 7:00 p.m. prevailing time in the Borough Council Chambers at the Gettysburg Municipal Building, 59 East High Street, Gettysburg, Pennsylvania. Written notice of the hearing was given in accordance with law and procedures of the Board by publication in The Gettysburg Times; by posting; and by U.S. first-class mail to all interested parties as indicated to the Borough.

Present for the hearing were Stacey Green, Board Chair; Board members Darlene Brown, John Butterfield and Rodger Goodacre; and Board Alternate Conor Brooks, who was seated as a voting member for the hearing, constituting a quorum. Also present were Rebecca Young LaBarre, Borough Planning Director and Zoning Officer; and John S. Phillips, Board Solicitor. Corrie L Ondrizek, RPR, was the Stenographer. Applicant was present and testified, and Gary W. Shaffer, AIA, Shaffer Design Associates, also testified for Applicant.

No members of the public requested party in interest standing for the hearing. Kurt Kramer, 12 Wade Avenue, Gettysburg, spoke in support of the Application.

### **FINDINGS OF FACT**

1. Atlas NC1 SPE, LLC of Winston Salem, North Carolina, is the owner of the Property, Tax Parcel ID# 16013-0047---000, having taken title on March 23, 2017.
2. Applicant is equitable owner of the Property under an Agreement of Sale contingent on receipt of zoning approval for use of the Property as a Bed and Breakfast

3. The Property is wholly located in an R-2 Moderate Residential Density District and additionally within the Streetscape Overlay Enhancement District.
4. The Property was most recently used as a professional office under a special exception granted on September 29, 1978; prior to that it was a single-family residence, built prior to 1945.
5. Applicant intends to adaptively reuse the Property as a Bed and Breakfast, with a total of seven rental units, four in the main building and three in the carriage house.
6. Applicant owns and operates A Sentimental Journey Bed & Breakfast at 431/433 Baltimore Street, near the Property.
7. The adaptive reuse will not change the basic footprint or exterior character of the existing building. Applicant proposes to upgrade the fence bordering on the Gettysburg School District Alumni Park, to the north of the Property. Available off-street parking exceeds the requirements for a Bed and Breakfast use.
8. Ordinance §1524(H) contains specific special exception criteria for a bed and breakfast use. Applicant testified that they are and will comply with each criterion.
9. Regarding general special exception criteria contained in Ordinance §1704(B):
  - a. The proposed use is consistent with the stated purposes of the Ordinance as an adaptive reuse of the Property.
  - b. The proposed use is generally consistent with both the Comprehensive Plan and the Zoning Map.
  - c. The proposed use complies with lot requirements and building height. No building expansions or extensions as to area, coverage or height are proposed.
  - d. The proposed use is consistent with the criteria found in Ordinance Part 15. As the proposed use does not involve new development or redevelopment, Part 19 is not applicable.
  - e. Nothing in the record suggests that the proposed use will substantially injure or detract or impact the use of neighboring property or the character of the neighborhood, and the Borough Planning Commission found that it will not be detrimental to the neighborhood.
  - f. Fencing and screening will be provided as appropriate given the parking access issues with an abutting property and street sightlines.
  - g. The proposed use adaptively reuses the existing structure while maintaining its character.
  - h. The use complies with the off-street parking requirement; provisions for loading areas are not required.
  - i. The sidewalk network provides safe and adequate access to the street.
  - j. Adequate pedestrian access to the site is provided.
  - k. The proposed use will not adversely affect public facilities and utilities.
  - l. The Applicant does not propose signage at this time and no specific signage is addressed by this decision.



10. The Borough Planning Commission, at its March 19, 2018, meeting reviewed the Application and voted to recommend the special exception be granted, having found that the proposed use is not detrimental to the purpose of the R-2 District and the proposed use is appropriate to, compatible with, and will enhance the character of the neighborhood.

### APPLICABLE LAW

1. The burden is on Applicant to provide “substantial evidence” to allow the Board to make its findings. Sadsbury Twp. Zoning Hearing Bd. V. Sadsbury Twp. Bd. Of Supervisors, 804 A.2d 1274 (Pa.Cmwlth. 2002)
2. A special exception is not an exception to a zoning ordinance, but rather a use which is expressly permitted absent a showing of a detrimental effect on the community. Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board, 139 Pa.Cmwlth. 206, 590 A.2d 65 (1991).
3. In a special exception case, the applicant first bears the burden of establishing that the application falls within the special exception provision of the ordinance. City of Hope v. Sadsbury Tp. Zoning Hearing Bd., 890 A.2d 1137, (Pa.Cmwlth. 2006).
4. Once the Applicant demonstrates that the use falls within the ordinance provisions, the burden of persuasion shifts to objectors to rebut the legislative presumption, which exists in all special exception cases, that the use is consistent with the health, safety and welfare of the community. Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board, 139 Pa.Cmwlth. 206, 590 A.2d 65 (1991).
5. The requirements of the Streetscape Overlay Enhancement District (Ordinance Part 19) are triggered by “new development” or “redevelopment.” Ordinance §1902.

### ANALYSIS

Applicant provided, on the record, substantial evidence sufficient for the Board to find that the proposed adaptive reuse of the existing buildings on the Property as a Bed and Breakfast meets the specific and general criteria contained in the Ordinance for grant of a special exception. No evidence was presented that the use would have a detrimental effect on the community in the areas of health, safety or welfare, and the Planning Commission specifically found that the proposed use would enhance the neighborhood. Applicant having demonstrated compliance with the relevant criteria, the burden would then shift to any objectors to rebut the presumption the use is consistent with the health, safety and welfare of the community, but no objectors were present.

## **CONCLUSION**

During deliberations in public, Mr. Butterfield moved the Board to grant the requested special exception under Section 27-503(A) to use the Property as a professional office. Ms. Brown seconded the motion. By roll call vote the motion passed unanimously.

The application is approved.

### **GETTYSBURG BOROUGH ZONING HEARING BOARD**

Dated: 7 May 2018

  
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Stacey Green, Board Chair

Dated: 7 May 2018

  
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**GETTYSBURG BOROUGH ZONING HEARING BOARD**

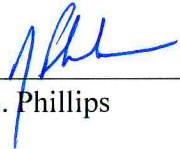
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**Certificate of Service**

I certify a true and correct copy of the Decision of the Gettysburg Borough Zoning Hearing Board in the above referenced matter was served on the Borough of Gettysburg by hand delivery and served on Applicant and others by U.S. First Class Mail, postage prepaid (unless otherwise noted) on May 7, 2018, addressed as follows:

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Shaffer Design Associates  
26 North 4<sup>th</sup> Street  
Gettysburg, PA 17325

Barbara D. and Steven A. Shultz  
433 Baltimore Street  
Gettysburg, Pennsylvania 17325

  
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John S. Phillips